

**KENTUCKY DEPARTMENT OF EDUCATION  
DIVISION OF FACILITIES MANAGEMENT  
AMENDMENT TO  
STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONSTRUCTION MANAGER  
AIA B801/CMa-1992**

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**ARTICLE 2  
SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES**

**2.2 PRECONSTRUCTION PHASE**

- 2.2.6 Revise last sentence: "The Construction Manager shall advise the Owner and Architect if it appears that the Construction Cost may exceed the latest established Project Budget, as described on the previously approved BG-1, May 1993, and make recommendations for corrective action."
- Add sentence: "When corrective action is necessary, the Construction Manager shall, with the Architect's assistance, assist the Owner in decreasing the Project Scope or amend the BG-1, Page 2, May 1993, providing for increased funding requirements to be approved by the Kentucky Department of Education."
- 2.2.10 Revise first sentence: "The Construction Manager shall separate the Project into contracts for various categories of Work based on the labor force and construction trades available in that area of the State, including the method to be used for selecting Contractors and awarding Contracts. The Construction Manager shall provide 'breakouts' for materials to be purchased by the owner directly from the suppliers. Material breakouts will be identified in the following manner: Item, Manufacturer, Supplier, Lump Sum Price, Alternates."
- 2.2.16 Add to paragraph: "The Construction Manager shall advise the Owner and Architect if it appears that the Construction Cost may exceed the latest established Project Budget, as described on the previously approved BG-1, May 1993, and make recommendations for corrective action. When corrective action is necessary, the Construction Manager shall, with the Architect's assistance, assist the Owner in decreasing the Project Scope or amend the BG-1, Page 2, providing for increased funding requirements to be approved by the KDE."
- 2.2.18 Revise second sentence: "The Construction Manager, with the assistance of the Architect, shall prepare and issue bidding documents, which include all Kentucky Department of Education approved forms for Instructions to Bidders, General Conditions, Supplemental Conditions, all Proposed Contract Forms and Documents, language specific to individual bids, Letters of Authorization and specific bid process documentation, to bidders and conduct pre-bid conferences with prospective bidders. Bid packaging shall ensure at least ~~five~~ known potential bidders are notified of bidding requirements for each bid package."
- Add sentence: "The Construction Manager and the Architect shall not prepare or issue bidding documents without first obtaining Kentucky Department of Education and the Owner's approval of the bidding documents (completed plans and specifications) and the latest estimate of construction. See Supplemental Paragraph 2.2.6."
- 2.2.19 Add sentence: "The Construction Manager shall, by corresponding with prospective bidders, coordinate bid packages, receive deposits for plans and specifications, and distribute said plans and specifications to prospective bidders, and shall not transport bidder's bid envelopes

to the bid opening."

- 2.2.20      Revise paragraph: "The Construction Manager shall assist the Owner in preparing and compiling Construction Contracts, Purchase Orders, supporting documentation such as Letters of Authorization, Performance and Payment Bonds, and Certificates of Insurance, and advise the Owner on the acceptability of Subcontractors, and Material Suppliers proposed by Contractors. Provide all documents in a three-ring binder with index and assembled by bid division, including a Bid Tabulation, Proposal Form from the low Bidder, Bid Security, unexecuted Proposed Contract, unexecuted Proposed Purchase Orders, and Letters of Authorization for the Owner, and submit to the Kentucky Department of Education, Division of Facilities Management, 500 Mero Street, Capital Plaza Tower, Frankfort, Kentucky, within 10 working days prior to the intended date for sale of revenue bonds."

## **2.3                    CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

- 2.3.1      Revise paragraph: "The Construction Phase will commence with the award of the initial Construction Contract or Purchase Order and together with the Construction Manager's obligation to provide Basic Services under this Agreement, will terminate when final payment to all Contractors and Material Suppliers is made, which coincides with Kentucky Department of Education approval of the BG-4, May 1993, and after a one-year construction warranty inspection is completed and all work is accepted by the Owner."

Add sentence: "Provide a minimum of a full-time job superintendent and a designated project construction manager from the Construction Manager's central office to control and manage this Project until accepted by the Owner. This service includes inspections of and services related to the Project after the end of the Construction Phase to include the year-end and warranty inspection."

Add sentence: "The Construction Manager shall have authority and responsibility as the Owner's representative, during the course of the Work to require changes in the means, methods, techniques, and procedures being implemented by the Contractor, if in the opinion of the Construction Manager, the Work is not being performed in such a manner as to meet the overall project schedule, and shall not be responsible for the failure of any Contractor to carry out Work in accordance with the Contract Documents."

- 2.3.4      Revise paragraph: "The Construction Manager shall schedule and conduct a minimum of bi-monthly meetings to discuss such matters..."
- 2.3.6      Revise paragraph: "Consistent with the various bidding documents, and utilizing information from the Contractor and Material Suppliers, the Construction Manager shall..."
- 2.3.7      Add to paragraph: "...and shall stop any Work by Contractors which is not satisfactory in performance and contact the Architect for a determination in resolving the performance issue."
- 2.3.9      Add to paragraph: "The Construction Manager shall provide the Owner and/or their Financial Consultant the appropriate reports and forecasts whenever project costs exceed the approved budget on the BG-1."
- 2.3.11     Add to paragraph: "The Construction Manager will review all Applications for Payment by the Contractors and Material Suppliers, including final payment, and will assemble them with similar Applications from other Contractors on the Project into a combined Project Application for Payment. The Construction Manager will then make recommendations to the Architect for certification for payment."

- 2.3.11.4 Add to paragraph: "The Construction Manager shall review bid documents and check for conformance of all Owner purchased materials, systems, and equipment prior to authorization for a certificate of payment relating to any such Purchase Order items and ensure off-site stored materials are properly insured."
- 2.3.13 Revise last sentence: "The Construction Manager, in consultation with the Architect and the Owner, shall reject and/or stop work which does not conform to the requirements of the Contract Documents."
- 2.3.15 Add to Paragraph: "In the opinion of the Construction Manager, in consultation with the Architect and having authority and responsibility as the Owner's representative during the course of the Work, the Work is not being performed in such a manner as to meet the overall Project Schedule, the Construction Manager shall require changes in the means, methods, techniques, and procedures being implemented by the Contractor."
- 2.3.17 Add sentence: "All Change Orders are to be submitted in conformance to Kentucky Department of Education requirements for review and execution."
- 2.3.19 Revise paragraph: "The Construction Manager shall receive updated and current Certificates of Insurance from the Contractors doing the Work and ensure that no Certificates have lapsed, then forward current Certificates to the Owner with a copy to the Architect."
- 2.3.22 Revise last sentence: "The Construction Manager shall make all such records available to the Architect and upon completion of the Project shall deliver them to the Architect for review and transmittal to the Owner."
- 2.3.25 Add sentence: "The Construction Manager shall assist the Architect in preparation of the BG-4, May 1993, for submission to the Owner and the Kentucky Department of Education for final payment authorization."
- 2.3.27 Add to first sentence: "...to the Owner through the Architect for review and approval for conformance to the Contract Documents."
- 2.3.28 Revise sentence: In lieu of "written consent of", insert "consultation with".

### **ARTICLE 3 ADDITIONAL SERVICES**

#### **3.1 GENERAL**

This Article is to be neither included nor excluded in whole or in part. All additional services required, specific to the Project, shall be defined in the Project Request for Proposal authorized and confirmed in writing by the owner and accompanied by a written board of education order.

### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

- 4.1 Revise paragraph: "The Architect shall perform Basic, Additional, and Optional Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall consult with the Construction Manager to

coordinate the Architect's time schedule with the Project Schedule."

- 4.2 Revise paragraph: "The Owner shall establish and update an overall budget for the Project based on consultation with the Architect, the Construction Manager, and the Owner's Fiscal Agent, as applicable, which shall include the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs."
- 4.3 Add to sentence: "...and as approved by Kentucky Department of Education, Division of Facilities Management."
- 4.4 Revise second sentence: "The Owner, through Board of Education Order, shall examine and take action, in a timely manner, pertaining to documents submitted by the Architect..."
- 4.5 Revise second sentence: In lieu of "written consent of", include "consultation with".

## **ARTICLE 5 CONSTRUCTION COST**

### **5.1 DEFINITION**

- 5.1.1 Revise paragraph: "The Construction Cost shall be the total cost or estimated cost, as defined on the BG-1 to the Owner..."
- 5.1.2 Add to last sentence: "However, should the Construction Costs exceed the funds available, the re-bidding of individual contracts and preparation of those documents shall be at no additional cost to the Owner."

### **5.2 RESPONSIBILITY FOR CONSTRUCTION COST**

- 5.2.2 Delete in its entirety.
- 5.2.3 Delete in its entirety.
- 5.2.4 Delete in its entirety.
- 5.2.5 Delete in its entirety.

## **ARTICLE 8 ARBITRATION**

Delete the title arbitration in its entirety and substitute with the following: Mediation.

- 8.1 Revise the paragraph to read: "...shall be subject to and decided by mediation in accordance with current procedures of the Mediation Center of Kentucky, 201 West Short Street, Suite 310, Lexington, Kentucky, or other non-profit mediation councils approved by the Division of Facilities Management."
- 8.2 Change the word "arbitration" to "mediation".
- 8.3 Change the word "arbitration" to "mediation".

8.4 Delete the paragraph in its entirety.

**ARTICLE 9  
TERMINATION, SUSPENSION OR ABANDONMENT**

9.7 Delete in its entirety.

**ARTICLE 10  
MISCELLANEOUS PROVISIONS**

10.9 Add new paragraph: "The Construction Manager shall execute and provide the Owner with a notarized Non-collusion Disclosure Affidavit as provided on current KDE form."

**ARTICLE 11  
INSURANCE**

**11.1 CONSTRUCTION MANAGER'S LIABILITY INSURANCE**

11.1.1 Add Item 7: "The Construction Manager shall purchase and put in place a 100% Performance and Payment Bond for 100% of the total lump sum amount of the Construction Contract. The Bond will be provided by a company authorized to do business in the Commonwealth of Kentucky and listed in and written within the terms and limits established by 58 Federal Register, p. 35778, 1993."

Add Item 8: "During the term of this Agreement, the Construction Manager agrees to provide evidence of insurance coverage in the amounts stated. In addition, the Construction Manager agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project, and for a period of two (2) years following substantial completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the architects practicing in the State are able to obtain such coverage."

"Professional liability coverage shall be provided in the following minimum amounts:

- |    |                                    |  |
|----|------------------------------------|--|
| .1 | Projects up to \$10,000,000        | \$500,000 per claim and<br>\$500,000 per annual aggregate; |
|    |                                    | and  |
| .2 | Projects in excess of \$10,000,000 | \$1,000,000 per claim and<br>\$1,000,000 per annual        |

aggregate.

The deductible for these policies shall not exceed 5% of the total limit of liability."

Add Item 9: "The Construction Manager shall maintain all liability requirements in accordance with the General Conditions of the Contract as follows:

The insurance required shall be written for not less than the following:

a. Worker's Compensation:

1.	State	Statutory
2.	Applicable Federal (e.g. Longshoreman's)	Statutory
3.	Employer's Liability	\$100,000

b. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractor's Protection; Product Liability and Completed Operations; Broad Form Property Damage);

1.	General Aggregate (Except Products-Completed Operations)	\$1,000,000
2.	Products-Completed Operations Aggregate	\$1,000,000
3.	Personal/Advertising Injury (per person/organization)	\$1,000,000
4.	Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
5.	Limit per Person Medical Expense	\$ 5,000
6.	Exclusions of Property in Contractors Care, Custody or Control will be eliminated.	
7.	Property Damage Liability Insurance will provide Coverage for Explosion, Collapse, and Underground Damage.	

c. Contractual Liability:

1.	General Aggregate	\$1,000,000
2.	Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000

d. Automobile Liability:

1.	Bodily Injury	\$500,000 Each Person \$1,000,000 Each
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Accident

2. Property Damage

\$500,000 Each Accident, or a combined  
single limit of \$1,000,000.

e. Liability coverage for the Owner, the Architect, the Architect's Consultants and others listed in the Supplementary Conditions will be provided (subject to customary exclusions for professional liability), by endorsement as additional insureds on the Contractor's Liability Policy.

f. Excess Liability Umbrella Form:

1.	General Aggregate	\$1,000,000
2.	Each Occurrence	\$1,000,000

Add Item 10: "At the Owner's request, the Construction Manager may assist the Owner in obtaining a policy of All Risk Builder's Risk Insurance for each project for the benefit of the Owner, Construction Manager, and all Trade Contractors and Suppliers which shall be paid by the Owner."

**ARTICLE 12**  
**PAYMENTS TO THE CONSTRUCTION MANAGER**

**12.2 REIMBURSABLE EXPENSES**

- 12.2.1.5 Add paragraph: "Prior to services being provided or expenditures being made, the Construction Manager shall provide an itemized list of reimbursable expenses for approval by the Board of Education prior to executing the Contract."

**12.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

- 12.3.1 Delete in its entirety.
- 12.3.2 Revise sentence: Delete the word "Subsequent".
- 12.3.4 Revise paragraph: Delete the words "or negotiated proposals" and "or proposals"; Add to end of paragraph: "All payments are to be approved by the local Board of Education."
- 12.3.5 Add paragraph: "Retainage of 5% of the Construction Phase fee will be held until final payment is made for the completed project and is acceptable to the Owner and approved by the Kentucky Department of Education. The Construction Phase fee is based on the same proportionate percentage as the construction's completion."

**12.5 PAYMENTS WITHHELD**

- 12.5.2 Add paragraph: "Should liquidated damages be assessed and received by the Owner, the Owner shall pay the Construction Manager a prorata share of proceeds based on total amount received for compensation of continued services beyond the original approved Contract time period."

**ARTICLE 13**  
**BASIS OF COMPENSATION**

- 13.1 Delete in its entirety.

**13.5 ADDITIONAL PROVISIONS**

- 13.5.2 Delete last sentence: "Amounts unpaid ... of the Construction Manager."

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